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In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 514

D. B. HEINER, COLLECTOR OF INTERNAL REVENUE, 23d District of Pennsylvania

v.

JOHN H. DONNAN, SIDNEY B. DONNAN, ALVAN E. Donnan, et al., etc.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE COLLECTOR

OPINIONS BELOW

The opinion of the District Court upon the demurrer to the plaintiff's statement is reported in 48 F. (2d) 1058. The final opinion of the District Court is not officially reported but may be found in Volume I, Prentice-Hall Tax Service, 1931, p. 1796.

JURISDICTION

The certificate of the Circuit Court of Appeals was filed in this Court on November 11, 1931. The jurisdiction of this Court rests on Section 239 of

the Judicial Act as amended by the Act of February 13, 1925.

QUESTIONS CERTIFIED

The questions certified are as follows:

1. Does the second sentence of Section 302 (c) of the Revenue Act of 1926 violate the due process clause of the Fifth Amendment to the Constitution of the United States?

2. If the answer to the first question be in the negative, is the second sentence of Section 302 (c) of the Revenue Act of 1926 void because repugnant to Sections 1111, 1113 (a), 1117, and 1122 (c) of the same Act?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved are set forth in Appendix A, *infra*, pp. 31–35.

STATEMENT

The certificate sets forth the facts as follows (R. 1–2):

On March 1, 1927, John W. Donnan transferred by indenture $1,790,000 of securities to trustees for his four children. The transfer was a complete and irrevocable gift inter vivos and without consideration.

On September 15, 1927, he advanced $32,500 to a son, also without consideration.

John W. Donnan died on December 23, 1928. His executors filed an estate-tax return and re-

ported for information purposes the said transfer and advancement. The Commissioner of Internal Revenue found that the value of the properties so transferred and advanced was, at the time of the donor's death, $2,200,883.26 and $32,500, respectively, and assessed an additional estate tax of $224,186.25. He determined this additional tax by including in the gross estate of decedent the value of the properties transferred and advanced, in excess of the statutory exemption, on authority of the second sentence of Section 302 (c) of the Revenue Act of 1926 (44 Stat. 70, 27; U. S. C. Sup. V, Title 26, Section 1094), which, without regard to what the fact may be, provides that "such transfer or transfers [made by a donor within two years prior to his death] shall be deemed and held to have been made in contemplation of death * * *." The executors paid the Collector $47,733.87, being twenty per centum of the additional tax and interest, and the balance, being eighty per centum thereof, to the Commonwealth of Pennsylvania. After claim for refund and its rejection, the executors instituted this action in the District Court of the United States for the Western District of Pennsylvania to recover the $47,733.87, paid as a Federal estate tax, and interest. The case was tried to the court without a jury. The trial court found as facts that neither the transfer in trust nor the advancement was made in contemplation of death, and held the second sentence of Section 302 (c) of the Revenue Act of 1926 unconstitutional because

violative of the due process clause of the Fifth Amendment, and also void because repugnant to other sections of the Act.

SUMMARY OF ARGUMENT

I

Whether a particular transfer is in fact made in contemplation of death necessarily involves proof of the state of mind of the donor. Such proof by the Government is inherently difficult and has been found virtually impossible. The difficulty was recognized by Congress from the first in the present series of estate tax laws by including a rebuttable presumption that transfers made within two years of death were in contemplation of death. It then adopted the gift tax. These measures failed to prevent evasions and produced inequalities. Coincident with the repeal of the gift tax Congress, by Section 302 (c) of the Revenue Act of 1926, adopted a conclusive presumption that the excess over $5,000 of all transfers made within two years of death to any one person were made in contemplation of death. This was done only after Congress had exhausted other means of safeguarding the revenue and preventing evasions and after fourteen of the States had found it necessary to adopt similar measures. The purpose of the statute was to make effective the exercise of the constitutional power of Congress to lay an excise tax upon testamentary transfers.

II

The effect of the statute is to include all such transfers in the measure of the gross estate regardless of actual contemplation of death. The ultimate question here is whether, viewed in the light of experience, the shortness of the period intervening between the transfer and death, the ease with which estate taxes are evaded, and the broad powers of taxation granted by the Constitution, the inclusion of such transfers in the measure of the tax is so arbitrary and capricious as to deprive the taxpayer of his property without due process of law.

The inclusion of transfers of the kind here involved is not forbidden by the Constitution merely because they do not technically pass at the decedent's death. Gifts *inter vivos* in contemplation of death are of the same class.

The classification is not arbitrary or unreasonable. It leaves ample room for the ordinary bounty of donors. It is not retroactive. Congress may include innocent articles or activities within a proscribed class if their inclusion is necessary in order to accomplish the purpose to which the law is directed and to prevent its evasion. Congress is the judge of the degree of the necessity which calls forth the statute. The necessity may arise out of difficulty of proof or similarity of objects, or because experience has shown that the thing declared by the statute to be true is so often true that the administration of justice will best be

served by not permitting it to be questioned in any case.

The need to draw a line somewhere is inherent in any classification. The two-year period is justified by "the natural and reasonable inference which may be drawn from the fact that but a short period intervenes between the transfer and death" and is reasonably founded in "the purposes and policies of taxation." No taxing statute has by this Court been held to violate the due process clause of the Fifth Amendment except on the ground of unreasonable retroactivity, and then only because due process prevents an *ex post facto* imposition of a burden upon a right fully exercised. In no case has a classification for tax purposes been held unconstitutional under the Fifth Amendment.

III.

The case of *Schlesinger* v. *Wisconsin*, 270 U. S. 230, may be distinguished. The Wisconsin statute there held invalid included transfers made within *six* years of death, while the statute here includes only certain transfers made within *two* years. This Court has since recognized that it is natural and reasonable to infer that a transfer was made in contemplation of death where but "a short time" intervenes between the events.

The *Schlesinger case* did not repudiate the principle which permits the inclusion of innocent objects within the class to which the law applies. This principle has been recognized by the Court in several later cases, and it is particularly applicable here.

Another distinction is that the Wisconsin statute imposed a succession tax falling on the donee whereas the Federal statute imposes an excise upon the right to transmit and for purposes of taxation includes the value of the transfer in the gross estate to prevent diminution of the estate by transfers made prior to death.

IV

If the statute is constitutional, taxes collected under it are taxes legally assessed and collected; consequently it would not be in conflict with the sections of the Revenue Act which permit recovery of taxes erroneously or illegally assessed and collected.

ARGUMENT

Two questions have been certified for decision by this Court. Points I, II, and III of this brief relate to the first question and Point IV relates to the second.

I

SECTION 302 (c) OF THE REVENUE ACT OF 1926 IS A NECESSARY AND PROPER EXERCISE OF THE POWER OF CONGRESS TO LAY AND COLLECT TAXES, AND IN THE JUDGMENT OF CONGRESS WAS THE ONLY WAY IN WHICH THE EVASION OF ESTATE TAXES COULD BE PREVENTED

Section 302 (c) of the Revenue Act of 1926 provides:

> SEC. 302. The value of the gross estate of the decedent shall be determined by includ-

ing the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

* * * * *

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth. *Where within two years prior to his death but after the enactment of this Act and without such a consideration the decedent has made a transfer or transfers, by trust or otherwise, of any of his property, or an interest therein, not admitted or shown to have been made in contemplation of or intended to take effect in possession or enjoyment at or after his death, and the value or aggregate value, at the time of such death, of the property or interest so transferred to any one person is in excess of $5,000, then, to the extent of such excess, such transfer or transfers shall be deemed and held to have been made in contemplation of death within the meaning of this title.* Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death but prior to the enactment of this Act without such consideration, shall, unless shown to the contrary, be deemed to have been made

in contemplation of death within the meaning of this title.

The first question certified is whether the sentence italicized above is constitutional. We contend that it is valid as a necessary and proper exercise of the power of Congress to lay and collect taxes.

Article I, Section 8, of the Constitution contains, among others, the following provisions (1st and 18th clauses):

> SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;
>
> * * * * *
>
> To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

In determining whether the provision of Section 302 (c) of the Revenue Act of 1926 here in question is valid as an exercise of the power granted to Congress, it is important to consider the reasons which led to its inclusion as a part of the Federal estate tax law. Its history plainly shows that the provision under consideration was adopted by Congress

as a necessary means of preventing evasion of the estate tax and after all other efforts to solve the problem had failed.

The present estate-tax law originated in Title II of the Revenue Act of 1916, c. 463, 39 Stat. 796. Section 202 (b) of that Act included in the value of the gross estate of the decedent transfers made in contemplation of death, and provided:

> Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title; * * *

This rebuttable presumption, establishing a rule of evidence relative to transfers made within two years of death, was reenacted in Section 402 (c) of the Revenue Act of 1918, c. 18, 40 Stat. 1057, in Section 402 (c) of the Revenue Act of 1921, c. 136, 42 Stat. 227, and in Section 302 (c) of the Revenue Act of 1924, c. 234, 43 Stat. 253 (U. S. C., Title 26, Sec. 1094). But several years' experience in the administration of the estate tax law proved that this rebuttable presumption was insufficient to prevent evasions of the estate tax on a large scale.

The difficulty of determining whether a particular transfer was or was not made in contemplation of death is apparent. The question depends largely on the intent of the donor. *United States* v. *Wells*,

mind is almost always a matter of difficulty, and (283 U. S. 102, 117. Proving a person's state of this is especially true when the person is dead. Furthermore, the motives which prompt persons to make gifts are exceedingly complex, and a man may easily lead himself to believe that he makes a gift solely for some purpose to be served during his lifetime, although the fact is that his motive is mixed and that he would not have made it had there been no estate tax in force. If the donor himself can not clearly analyze the motives which actuate his gift, the difficulties which stand in the way of the tax collector when he tries to prove the donor's motive after his death are obvious. Whatever proof exists is almost invariably in the control of the decedent's representatives. If a person sets out to evade the tax, he is very likely to camouflage the motive for making the gift, and it is extremely difficult to show that his declarations are not sincere, particularly as he is not alive and subject to cross-examination. Consequently the Government usually finds it impossible to disprove a claim that a gift was not made in contemplation of death.[1]

[1] The difficulties are clearly illustrated by the fact that up to the time of the committee report on the provision here in question, the Government failed to establish that the transfer in question was made in contemplation of death in every reported case on the subject. See *Polk* v. *Miles*, 268 Fed. 175 (Md.); *Gaither* v. *Miles*, 268 Fed. 692 (Md.); *Vaughan* v. *Riordan*, 280 Fed. 742 (W. D. N. Y.); *Meyer* v. *United States*, 60 C. Cls. 474; *Rea* v. *Heiner*, 6 F. (2d) 389 (W. D. Pa.); *Fidelity & Columbia Trust Co.* v. *Lucas*, 7 F. (2d) 146 (W. D. Ky.); *Appeal of Richardson*, 1 B. T. A. 1196;

To prevent such evasions, Congress in 1924 adopted the gift tax (Secs. 319–324 of the Revenue Act of 1924; U. S. C., Title 26; Secs. 1131–1136), the constitutional validity of which was upheld by this Court in *Bromley* v. *McCaughn*, 280 U. S. 124. The reports of the Committees and the debates in Congress show clearly that the intention was not that the gift tax in itself would produce a large amount of revenue but that it would supplement the estate tax and make the latter effective. It was a step taken by Congress as a necessary and proper incident to the exercise of its constitutional power to levy a tax on testamentary transfers.[2]

Appeal of McDonald, 2 B. T. A. 1295; *Appeal of Hillenmeyer*, 2 B. T. A. 1322; *Appeal of Starck*, 3 B. T. A. 514. The Government has continued to be almost uniformly unsuccessful whenever the claim has been disputed.

[2] House Report No. 179, 68th Congress, 1st Sess., p. 75; House Report No. 1, 69th Congress, 1st Sess., pp. 15, 39; Senate Report No. 52, 69th Congress, 1st Sess., p. 9; *idem*, Part 2, p. 10; Congressional Record, Vol. 65, Part 3, pp. 3119, 3120, 3122; Part 4, pp. 3371, 3372, 3373; Part 8, pp. 8094, 8095, 8096.

Further evidence that the gift tax was intended merely to supplement the estate tax is found in the facts that it was coupled with the estate tax under the same title in the Act of 1924 (Title III); that the rates were the same as in the case of testamentary transfers (Secs. 301 (a) and 319); that the primary exemption of $50,000 was the same (Secs. 303 (a) (4) and 321 (a) (1)); and that in the Revenue Act of 1926, when the estate tax rates were reduced and the reduction was made retroactively effective (Sec. 301), a corresponding change was made in the rates applicable to the gift tax (Sec. 324). Adequate provision was also made for crediting the gift tax against the estate tax where the amount of the gift

But the gift tax proved to be exceedingly difficult to administer and enforce; it resulted in inequalities, the revenue which it produced was small, and its provisions were easily evaded. Senate Report No. 52, 69th Congress, 1st Sess., p. 9. For these reasons it was repealed by Section 324 of the Revenue Act of 1926. As a substitute for the gift tax and the rebuttable presumption as to transfers made within two years of death, Congress enacted the provision under consideration, which in substance taxes the excess of transfers aggregating more than $5,000 to any one person, made without consideration, after the passage of the statute and within two years of death, without proof that they were made in contemplation of death.

It is obvious that no estate tax can be effective without some means for taxing such transfers *inter vivos* as are made to evade the tax imposed at death. Fourteen of the States had found it necessary to adopt similar safeguards for their succession taxes (see Appendix B, pp. 36–38 *infra*, for a history of State legislation); and it can not be said that there was "no basis for this widespread conviction." See *Purity Extract Co.* v. *Lynch*, 226 U. S. 192, 205; *Silz* v. *Hesterberg*, 211 U. S. 31, 40.

Congress had tried other means of safeguarding the revenue and believed that the measure here in-

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was later required to be included in the decedent's gross estate (Sec. 322, Revenue Act of 1924; Sec. 404, Revenue Act of 1928, c. 852, 45 Stat. 791 (U. S. C., Sup. V, Title 26, Sec. 1134)).

volved was the only way to prevent evasion. This is shown by the report of the Committee on Ways and Means of the House of Representatives recommending the proposed change. That Committee in its report said (House Report No. 1, 69th Cong., 1st Sess., p. 15):

> Under all the prior revenue acts, a gift or transfer of property by trust or otherwise without a fair consideration and within two years prior to the decedent's death is, unless shown to the contrary, deemed to be made in contemplation of death, and the amount of the gift or transfer is included in the gross estate of the decedent. *The presumption, however, is rebuttable and has proved very ineffective in practical administration. The difficulty of enforcement will be even more serious in view of the repeal of the gift tax.* For this reason, subdivision (c) has been amended so that all such transfers made within two years of the decedent's death without a fair consideration will be included in the gross estate regardless of whether or not they are made in contemplation of death. Experience under the act of 1921 showed that the honest and scrupulous citizen paid the tax, but many less scrupulous found an easy way of evading it. This not only caused great loss in revenue to the Government, but was grossly unfair to those who paid the tax in good faith. *The inclusion of this provision will prevent most of the evasion, and is the only way in which it can be prevented.* (Italics ours.)

One of the fundamental powers granted to Congress by the Constitution is the specific power to lay and collect taxes. Congress is also given power to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers." Legislative history and administrative experience show plainly that after careful study Congress chose the provision now under consideration as a necessary and proper means of carrying into execution its power to lay and collect taxes on estates. Adopting the words of this Court in *Tyler* v. *United States*, 281 U. S. 497, 505:

> The evident and legitimate aim of Congress was to prevent an avoidance, in whole or in part, of the estate tax by this method of disposition during the lifetime of the [donor]; and the provision under review is an adjunct of the general scheme of taxation of which it is a part, entirely appropriate as a means to that end.

II

THE TAXATION OF TRANSFERS MADE WITHIN TWO YEARS OF DEATH IS NOT ARBITRARY OR UNREASONABLE SO AS TO BE WITHIN THE PROHIBITION OF THE FIFTH AMENDMENT

The wording of the provision in question is that of a conclusive presumption that certain transfers are made in contemplation of death. Its effect is to increase the measure of the estate tax by including in the gross estate of the decedent the excess over $5,000 of the aggregate of transfers made to

any one person after the passage of the Act and within two years of death, just as transfers made in contemplation of death are included, although each is a transfer *inter vivos* and not a true testamentary disposition. But the ultimate question is whether, viewed in the light of experience, the shortness of the period intervening between the transfer and death, the ease with which estate taxes are evaded, and the broad powers of taxation granted by the Constitution, the inclusion of such transfers in the measure of the tax is so arbitrary and capricious as to deprive the taxpayer of his property without due process of law.

Considered as creating a conclusive presumption, the statute establishes a rule of substantive law and not a mere rule of evidence. Such statutes have been upheld in many cases. See, for example, *Hawkins* v. *Bleakly*, 243 U. S. 210; *Orient Insurance Co.* v. *Daggs*, 172 U. S. 557; *Hawker* v. *New York*, 170 U. S. 189, 195; *Jones* v. *Brim*, 165 U. S. 180, 183; *Street* v. *Farmers' Elevator Co.*, 34 S. D. 523; *Conrad* v. *Smith*, 6 N. D. 337, 342, 343; *State ex rel. London & L. Ind. Co.* v. *District Court*, 139 Minn. 409, 411; *State* v. *Lapointe*, 81 N. H. 227; *Matter of Buchanan*, 184 App. Div. 237; 10 Tex. Law Review, p. 34. Cf. *Mobile, etc., R. R. Co.* v. *Turnipseed*, 219 U. S. 35. which deals with a rebuttable presumption establishing a rule of evidence, as distinguished from a conclusive presumption establishing a rule of substantive law.

The creation of a conclusive presumption, is "after all but an illustration of the power to classify." *Jones* v. *Brim*, 165 U. S. 180, 183, *supra*. The question, then, is whether Congress has exceeded its power by including in the value of the gross estate only certain transfers made after the passage of the statute and within two years of death.

We have already contended that the power to include such transfers in the measure of the gross estate is granted to Congress in Article I, Section 8, of the Constitution, authorizing Congress to lay and collect taxes, and "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers." There is nothing in the Constitution which forbids the exercise of this power unless it is to be found in the Fifth Amendment. That amendment provides that "no person shall * * * be deprived of life, liberty, or property, without due process of law."

Congress has power to levy a tax upon testamentary transfers as well as upon transfers *inter vivos*. It is plain that the inclusion of transfers of the kind here involved is not forbidden by the Constitution merely because they do not technically pass at the decedent's death as a part of his estate. Thus, it is settled that gifts *inter vivos* made in contemplation of death may be included in the measure of the gross estate, although they are fully executed, are irrevocable and indefeasible. *United States* v. *Wells*, 283 U. S. 102; *Milliken* v.

United States, 283 U. S. 15. The value of property transferred in trust many years before the decedent's death may be included in the measure of the gross estate when the decedent has reserved a power of revocation. *Reinecke* v. *Northern Trust Co.*, 278 U. S. 339. Property held by the decedent and his wife as tenants by the entirety may be included in the measure of the gross estate. *Tyler* v. *United States*, 281 U. S. 497.

So, the sole constitutional objection to the provision now under consideration must be based upon the proposition that the classification adopted by Congress is so arbitrary and unreasonable as to offend against the general language of the due process clause of the Fifth Amendment. We submit that the classification is a reasonable and proper one, within the power of Congress.

The statute is entirely prospective in operation. It includes no transfers made prior to its enactment, even though the donor's death occurs thereafter. The decedent was fully informed that the value of the transfer would be included in his gross estate should his death occur within two years thereafter. See *Milliken* v. *United States*, 283 U. S. 15, 23–24, *supra*. Cf. *Orient Insurance Co.* v. *Daggs*, 172 U. S. 557, *supra*.

It applies only to the excess over $5,000 of transfers to each donee within the period, thus leaving ample room for the ordinary bounty of donors and affecting only those transfers which otherwise would have the effect of substantially reducing the amount of the estate taxable at death.

The statute comes within the principle which this Court has repeatedly recognized, that the means by which a law may be avoided or defeated is a proper basis for classification. *St. John* v. *New York*, 201 U. S. 633; *District of Columbia* v. *Brooke*, 214 U. S. 138, 150; *Shevlin-Carpenter Co.* v. *Minnesota*, 218 U. S. 57, 69; *Tyler* v. *United States*, 281 U. S. 497, 505; *Milliken* v. *United States*, 283 U. S. 15, 20, *supra*.

The only objection that can be raised to the classification is that it may include transfers which were made without intent to evade the estate tax. But the inclusion within the tax of some gifts which in fact were not made to evade the estate tax is not an insuperable objection. This Court has frequently upheld statutes that included innocent articles or activities within the proscribed class, because their inclusion was necessary in order effectively to accomplish the purpose to which the law was directed.[3] A provision may be valid as a necessary adjunct to a matter that lies within the legis-

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[3] *Powell* v. *Pennsylvania*, 127 U. S. 678; *Jones* v. *Brim*, 165 U. S. 180; *Hawker* v. *New York*, 170 U. S. 189, 195; *Otis* v. *Parker*, 187 U. S. 606; *Silz* v. *Hesterberg*, 211 U. S. 31; *Purity Extract Co.* v. *Lynch*, 226 U. S. 192, 201; *Hawkins* v. *Bleakly*, 243 U. S. 210; *Hebe Co.* v. *Shaw*, 248 U. S. 297, 303; *Pierce Oil Corp.* v. *City of Hope*, 248 U. S. 498, 500; *Jacob Ruppert* v. *Caffey*, 251 U. S. 264, 283; *National Prohibition Cases*, 253 U. S. 350, 387–388; *Everard's Breweries* v. *Day*, 265 U. S. 545, 560; *Euclid* v. *Ambler Co.*, 272 U. S. 365, 389; *Lambert* v. *Yellowley*, 272 U. S. 581; cf. *United States* v. *Doremus*, 249 U. S. 86, 94. For the convenience of the Court, abstracts of these cases are set out in Appendix C, *infra*, pp. 39–42.

lative power, even though standing alone its constitutionality might have been subject to doubt. This doctrine has been applied repeatedly in tax cases.[4] And it has been held that it is permissible incidentally to include in the measure of an excise tax property exempt from taxation.[5] If Congress may prohibit the sale of confessedly innocent articles in order to insure the effective prohibition of others (and this Court has held that it may), we submit that Congress may also pass a measure necessary to prevent the evasion of taxes even though it may operate incidentally to tax some transactions which do not fall within the class which is the main subject of the tax.

The principle that equalizing taxation and preventing evasion justifies a classification that may incidentally include innocent objects is peculiarly applicable to the situation that confronted Congress. The circumstances which led to the adoption of the statute demonstrated the necessity of the provision to prevent evasion of the estate tax. By the trial and error method over a period of ten years Congress reached the conclusion that this statute was the only way in which the revenues of the Government could be protected. Congress is the judge of the degree of the necessity which calls

[4] *Milliken* v. *United States*, 283 U. S. 15, 20; *Tyler* v. *United States*, 281 U. S. 497, 505; *Corliss* v. *Bowers*, 281 U. S. 376, 378; *Taft* v. *Bowers*, 278 U. S. 470, 482; cf. *Fawcus Machine Co.* v. *United States*, 282 U. S. 375.

[5] *Flint* v. *Stone Tracy Co.*, 220 U. S. 107; *Educational Films Corp.* v. *Ward*, 282 U. S. 379.

forth the statute (*Everard's Breweries* v. *Day*, 265 U. S. 545, 559), whether the necessity arises because of the difficulty of proof, the similarity of objects, or because experience has shown that the thing declared by the statute to be true is so often true that the administration of justice will best be served by not permitting it to be questioned in any case.[6]

There is no basis for an objection to the classification adopted by Congress on the ground that

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[6] So-called "conclusive presumptions," such as that involved in the present case, which are in reality rules of substantive law, are found in the common law and have for many years been included in statutes. The effect of such a "presumption" is to regard as a fact that which may not be a fact. Among the so-called "conclusive presumptions" are: A child under seven years of age is unable to form a criminal intent (*Allen* v. *United States*, 150 U. S. 551, 558); a male child under fourteen years of age can not commit the crime of rape, and the related presumption as to the age of consent by a female (see *Holland* v. *State*, 161 Ga. 492); tax deeds are conclusive as to compliance with requirements of tax laws (*Callanan* v. *Hurley*, 93 U. S. 387, 390, 392); a deed registered twenty years or more under a Tennessee statute is registered on lawful authority (*Webb* v. *Den*, 17 How. 576); the imposition of liability on cities for damage by mob violence (*City of Chicago* v. *Sturges*, 222 U. S. 313).

The difficulties of proof justified imposing liability upon the initial carrier for loss or damage to goods shipped on a through bill of lading *Atlantic Coast Line* v. *Riverside Mills*, 219 U. S. 186.

The so-called "conclusive presumptions" are frequently met in Federal tax laws. Under Section 31 (b) of the Revenue Act of 1916 added by Section 1211 of the Revenue Act of 1917, c. 63, 40 Stat. 300, and Section 201 (b), (d), and (e) of the Revenue Act of 1918, and the corresponding sections of the subsequent Acts, dividends are conclusively presumed to have

the operation of the act is limited to transfers made within two years of death. Such a result is inherent in any classification. It might as well be said that statutes classifying persons twenty-one years old as eligible to vote or competent to contract are invalid for the reason that a person one day under twenty-one is just as competent as a person one day older.[7] The two-year line drawn by Congress is, we submit, justified by "the natural and reasonable inference which may be drawn from the fact that but a short period intervenes between the transfer and death." *United States* v. *Wells*, 283 U. S. 102, 117, *supra*.

The classification adopted by Congress is permissible because it has a "reasonable relation" to

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been paid out of certain specified profits. *Douglas* v. *Edwards*, 298 Fed. 229 (C. C. A. 2d), reversed on other grounds, 269 U. S. 204; *Harder* v. *Irwin*, 285 Fed. 402 (N. D. N. Y.); *Leland* v. *Commissioner*, 50 F. (2d) 523 (C. C. A. 1st), certiorari denied, 284 U. S. xv, in which a reconsideration of the petition for certiorari on the ground that the same question was involved as in the instant case was denied by this Court November 23, 1931; cf. *Mason* v. *Routzahn*, 8 F. (2d) 56 (N. D. Ohio), reversed, 13 F. (2d) 702 (C. C. A. 6th). The Circuit Court of Appeals for the First Circuit has invoked the presumption that a woman of any age is capable of bearing a child in determining the taxability of a contingent remainder. *Farrington* v. *Commissioner*, 30 F. (2d) 915. See also R. S. 3207, as amended by Section 1127, Revenue Act of 1926 (U. S. C., Sup. V, Title 26, Sec. 136), which establishes a conclusive presumption as to the validity of assessment in suits in equity by prior lienors.

[7] Other illustrations appear in footnote 6, *supra*. And see *King* v. *Mullins*, 171 U. S. 404; *Metropolis Theatre Co.* v. *Chicago*, 228 U. S. 61.

the end sought to be attained, i. e., the collection of the estate tax. Its basis need not be—though in this instance it is—deducible from the nature of the things classified; it is enough "if the classification is reasonably founded in 'the purposes and policies of taxation.'" *Watson* v. *State Comptroller,* 254 U. S. 122, 124; *Stebbins* v. *Riley,* 268 U. S. 137, 143.

This Court has held that it was not the intention of the framers of the Constitution and of the first ten amendments that the power expressly granted to Congress to lay and collect taxes was to be made ineffective by the prohibition of the Fifth Amendment against taking property without due process of law. *Brushaber* v. *Union Pacific Railroad,* 240 U. S. 1. The Court also suggested that an Act might be so arbitrary as to constrain the conclusion that it was not an exertion of the taxing power at all, but a confiscation of property, and therefore violated the Fifth Amendment. The suggestion has found application in the cases of *Nichols* v. *Coolidge,* 274 U. S. 531, and *Untermyer* v. *Anderson,* 276 U. S. 440, in each of which the Act in question was held unconstitutional because its retroactive application to transactions completed before the passage of the taxing statute was regarded as unreasonable. We have found no other decision of this Court in which a revenue act has been held to offend against the due process clause of the Fifth Amendment. The question involved in this case is not one of retroactivity, but of classification. An unreasonable application of a retroactive tax law is

a taking of property without due process of law, because the essence of the constitutional requirement of due process prevents an *ex post facto* imposition of a burden upon a right fully exercised. But it is submitted that in no case involving the power of taxation has this Court held a *classification* unconstitutional under the Fifth Amendment.

We respectfully submit that the statutory classification is a reasonable one. The presumption is in favor of the constitutional validity of a statute. It should not be set aside unless it clearly operates to deprive the taxpayer of due process of law. See *Hylton* v. *United States,* 3 Dall. 171, 174; *Fletcher* v. *Peck,* 6 Cranch 87, 128; *Ogden v. Saunders,* 12 Wheat. 213, 270, *Legal Tender Cases,* 12 Wall. 457, 531; *Sinking-Fund Cases,* 99 U. S 700, 718, *Trade-Mark Cases,* 100 U. S. 82, 96; *Mugler* v. *Kansas,* 123 U. S. 623, 661; *Nicol* v. *Ames,* 173 U. S. 509, 514–515; *Buttfield* v. *Stranahan,* 192 U. S. 470, 492; *Graves* v. *Minnesota,* 272 U. S. 425, 428; *Whitney* v. *California,* 274 U. S. 357, 371. In view of the fact that Congress has after long experience found the measure necessary to prevent evasions and inequalities and that the legislatures of fourteen States have enacted similar measures, should the courts say that it is bad "beyond a reasonable doubt" and must be overthrown? There must be some relatively short period of time prior to death which can be justified as a basis for declaring, as a substantive rule of law, that transfers occurring within its limits were made in contemplation of death. None of the courts which have held the

provision arbitrary and unreasonable has even attempted to demonstrate that the two-year period does not bear a necessary and reasonable relationship to contemplation of death.

III

THE PRESENT CASE IS NOT CONTROLLED BY SCHLESINGER v. WISCONSIN, 270 U. S. 230.

The District Court based its conclusion (48 F. (2d) 1058) that the statute in question was unconstitutional upon the decision of this Court in *Schlesinger* v. *Wisconsin,* 270 U. S. 230.[8]

This Court there held that a six-year provision in the Wisconsin inheritance-tax law violated the Fourteenth Amendment. Although this Court did not then and has not ordinarily found it necessary, in considering State statutes, to differentiate between the due process and the equal protection clauses of the Fourteenth Amendment, the difference between the equal protection clause in the Fourteenth Amendment and the due process clause in the Fifth is indicated in *LaBelle Iron Works* v. *United States,* 256 U. S. 377, where the Court said (p. 392):

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[8] The *Schlesinger* case was also the basis of the decisions of the courts below in *Handy* v. *Delaware Trust Co.*, 51 F. (2d) 867 (D. Del.), No. 546, on certificate from the Circuit Court of Appeals for the Third Circuit; *White* v. *Hall*, 48 F. (2d) 1060 (D. Mass.), 53 F. (2d) 210 (C. C. A. 1st), No. 636, on petition for a writ of certiorari to the Circuit Court of Appeals for the First Circuit; and *Anderson* v. *Guinzburg*, 51 F. (2d) 592 (S. D. N. Y.), — F. (2d) —— (C. C. A. 2d), No. 689, on petition for a writ of certiorari to the Circuit Court of Appeals for the Second Circuit.

> The Fifth Amendment has no equal protection clause; and the only rule of uniformity prescribed with respect to duties, imposts, and excises laid by Congress is the territorial uniformity required by Art. I, § 8. * * * The difficulty of adjusting any system of taxation so as to render it precisely equal in its bearing is proverbial, and such nicety is not even required of the States under the equal protection clause, much less of Congress under the more general requirement of due process of law in taxation.

See also *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 161.

Furthermore, the statute under consideration in the *Schlesinger case* and the inheritance tax law of which it was a part differ in several material respects from the Federal estate tax law under consideration here. The Wisconsin law by means of a conclusive presumption included all transfers of a material part of the estate made within six years of death, and the extremely long period embraced in the Wisconsin statute undoubtedly influenced the Court in reaching its conclusion that the statute was arbitrary. But here the period is only two years; the reasonableness of the inference increases as the time interval diminishes, and when the "short period" of two years is reached the inference becomes natural and reasonable. *United States* v. *Wells*, *supra*, 283 U. S. 102, 117. In the *Wells* case, in discussing the two-year rebuttable presumption which was the predecessor of the

present statute, this Court recognised "the natural and reasonable inference which may be drawn from the fact that but a short period intervenes between the transfer and death." There is an adequate basis for including such transfers within the statute and excluding others made at more remote periods. *Klein* v. *Board of Supervisors*, 282 U. S. 19, 23.

The *Schlesinger case*, 270 U. S. 230, 240, obviously was not intended to repudiate the principle that Congress may include within the scope of its legislative acts all that is reasonably necessary to carry its powers into execution, for since the decision in that case the principle has been recognized several times by this Court. *Milliken* v. *United States*, 283 U. S. 15, 20; *Tyler* v. *United States*, 281 U. S. 497, 505; *Taft* v. *Bowers*, 278 U. S. 470, 482; *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, 388, 389.

These cases may be reconciled with the *Schlesinger case* and the later cases of *Baldwin* v. *Missouri*, 281 U. S. 586, 593–594, and *Hoeper* v. *Tax Commission*, No. 17, October Term, 1931, decided November 30, 1931, because the three cases last named fall completely outside the penumbra which embraces the situations that permit the occasional inclusion of innocent objects when reasonably necessary to the accomplishment of a proper legislative end. In *Baldwin* v. *Missouri*, the court obviously was of the opinion (p. 594) that it was only in exceptional cases that personal tangibles could escape taxation; and in the *Hoeper case* the degree

of the necessity for using the wife's income as a part of the measure of the taxable income of the husband was extremely remote if not entirely absent. In other words, the degree of necessity existing in the *Schlesinger, Baldwin,* and *Hoeper cases* was so slight as to make the legislative action unreasonable, while in the present case the necessities have been recognized and other measures designed to meet them have been approved by this Court.

Another difference which may distinguish the two cases is that the Wisconsin statute levied an excise tax upon the privilege of receiving property by succession, the tax falling upon the donee, who was made personally liable therefor, and remaining a lien upon the property transferred until it was paid (*Schlesinger case,* p. 237), while the Federal estate tax is an excise upon the right to transmit, and attaches to the estate before distribution. *New York Trust Co.* v. *Eisner,* 256 U. S. 345. The Wisconsin law imposed a direct inheritance tax upon an individual whose right to receive a gift did not depend upon the permission of the State for the purpose of facilitating the collection of a tax from testamentary transferees whose right to receive was given by statute. Under the Federal estate tax law the tax is upon the right to transmit and falls upon the estate before distribution. The value of transfers made within two years of death is included as a part of the yardstick with which to measure the tax to be paid out of the estate of the person who himself exercised the privilege of transfer.

It should also be pointed out that this Court's opinion in the *Schlesinger case* may have been based in part at least on a misconception. In its opinion this Court declared (p. 240) that, under the Wisconsin statute, gifts within six years of death—

> are subjected to graduated taxes which could not properly be laid on all gifts or, indeed, upon any gift without testamentary character.

That such transfers may be so taxed, whether as gifts *inter vivos* or as transfers made in contemplation of death, is now settled by the *Bromley* and *Milliken cases.*

We submit that the foregoing material differences in the statutes involved and their application distinguish this from the *Schlesinger case.*

IV

THE SECOND SENTENCE OF SECTION 302 (c) OF THE REVENUE ACT OF 1926 IS NOT REPUGNANT TO SECTIONS 1111, 1113 (a), 1117, AND 1122 (c) OF THE SAME ACT

The second question certified refers to the taxpayer's contention in the courts below that since the above sections set up a complete system of corrective justice (*Cheatham* v. *United States,* 92 U. S. 85, 88), the second sentence of Section 302 (c) is repugnant to them because it deprives the taxpayers of the right to prove the facts. A reference to the sections indicated discloses that the taxpayer's right to recover is limited to taxes erroneously or illegally assessed and collected. If

the second sentence of Section 302 (c) is constitutional, the taxes collected under it would be taxes legally assessed and collected. It would, therefore, not be in conflict with or repugnant to the sections of the statute above referred to.

CONCLUSION

The statute is a necessary means adopted to protect the revenue of the Government and as incidental to and in aid of a constitutional power to tax. The classification it sets up is not arbitrary. Both questions should be answered in the negative.

Respectfully submitted.

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APPENDIX A

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution provides as follows:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Revenue Act of 1926, c. 27, 44 Stat. 9, 70, 115, 116, 119, 1921:

> SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—
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> * * * * * *
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> (c) To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death,

except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Where within two years prior to his death but after the enactment of this Act and without such a consideration the decedent has made a transfer or transfers, by trust or otherwise, of any of his property, or an interest therein, not admitted or shown to have been made in contemplation of or intended to take effect in possession or enjoyment at or after his death, and the value or aggregate value, at the time of such death, of the property or interest so transferred to any one person is in excess of $5,000, then, to the extent of such excess, such transfer or transfers shall be deemed and held to have been made in contemplation of death within the meaning of this title. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death but prior to the enactment of this Act, without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

* * * * *

(U. S. C., Sup. V, Title 26, Sec. 1094.)

SEC. 1111. Section 3220 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 3220. Except as otherwise provided in sections 284 and 319 of the Revenue Act of 1926 the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed

or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal-revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section." (U. S. C., Sup. V, Title 26, Sec. 149.)

SEC. 1113. (a) Section 3226 of the Revised Statutes, as amended, is reenacted without change, as follows:

"SEC. 3226. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from

the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after any such disallowance notify the taxpayer thereof by mail."

* * * * *

(U. S. C., Sup. V, Title 26, Sec. 156.)

SEC. 1117. Section 177 of the Judicial Code, as amended, is amended to read as follows:

"SEC. 177. (a) No interest shall be allowed on any claim up to the time of the rendition of judgment by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest, except as provided in subdivision (b).

"(b) In any judgment of any court rendered after the enactment of the Revenue Act of 1926 (whether against the United States, a collector or deputy collector of internal revenue, a former collector or deputy collector, or the personal representative in case of death) for any internal-revenue tax erroneously or illegally assessed or collected, or for any penalty collected without authority or for any sum which was excessive or in any manner wrongfully collected, under the internal-revenue laws, interest shall be allowed at the rate of 6 per centum per annum upon the amount of such tax, penalty, or sum, from the date of the payment or collection thereof to the date of entry of such judgment or, if such judgment is reviewed by an appellate court, to the date of entry of final judgment." (U. S. C., Sup. V, Title 28, Sec. 284.)

SEC. 1122. (c) The paragraph added by section 1310 of the Revenue Act of 1921 at the end of paragraph Twentieth of section 24 of the Judicial Code, relating to the jurisdiction of district courts, as amended, is reenacted without change, as follows:

"Concurrent with the Court of Claims, of any suit or proceeding, commenced after the passage of the Revenue Act of 1921, for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected, under the internal-revenue laws, even if the claim exceeds $10,000, if the collector of internal revenue by whom such tax, penalty, or sum was collected is dead or is not in office as collector of internal revenue at the time such suit or proceeding is commenced." (U. S. C., Sup. V, Title 28, Sec. 41 (20).)

APPENDIX B

CONCLUSIVE PRESUMPTION PROVISIONS IN STATE INHERITANCE TAX LAWS ADOPTED PRIOR TO 1926

Arizona.—Six-year presumption; Laws 1922, c. 26, sec. 1 (3); Act upheld generally *In re Hubbs,* 31 Ariz. 252, but no mention made of conclusive presumption.

Arkansas.—Three-year presumption covering transfers valued at $500 or over; Acts 1923, Act 438, sec. 1 (3); repealed, Laws 1929, Act 106, sec. 1; rebuttable presumption not substituted.

Colorado.—One-year presumption; Laws 1921, c. 144, sec. 2 (c); two-year rebuttable presumption substituted; Laws 1927, c. 114, sec. 2 (2) (c).

Indiana.—Two-year presumption; laws 1917, c. 118, sec. 1 (4); two-year rebuttable presumption substituted; Laws 1929, c. 65, sec. 1.

Kansas.—One-year conclusive presumption originally adopted; Laws 1909, c. 248, sec. 1; repealed; Laws 1913, c. 330; reenacted; Laws 1915, c. 357, sec. 1; one-year period changed to 90 days; Laws 1919, c. 305, sec. 1. The constitutionality of the 1909 Act was upheld in *State* v. *Cline,* 91 Kan. 416, but the conclusive presumption clause was not mentioned.

Kentucky.—Laws 1924, c. 111, sec. 1 (2); three-year period. Held unconstitutional on authority of *Schlesinger case* in *State Tax Commission* v. *Robinson's Executor,* 234 Ky. 415.

Mississippi.—Two-year presumption; Laws 1924, c. 134, sec. 5. Code of 1930, sec. 5069 (f).

Missouri.—Two-year presumption; Laws 1917, p. 115 (Revised Statutes 1919, sec. 558; Revised Statutes 1929, sec. 570); not repealed. Constitutionality of Act upheld in *State ex rel. McClintock* v. *Gwinott,* 275 Mo. 298, but conclusive presumption clause not mentioned.

North Carolina.—Five-year *prima facie* presumption as to gifts amounting to over 5 per cent of estate; Laws 1919, c. 90, sec. 6; repealed, Laws 1925, c. 101, sec. 903, and gifts amounting to over 3 per cent of estate made within three years of death were included without designating them as being in contemplation of death; Laws 1925, c. 101, sec. 6 (6); repealed, Laws 1927, c. 80, sec. 463, and three-year *prima facie* presumption as to gifts in excess of 3 per cent of estate substituted; Laws 1927, c. 80, sec. 1 (3), now sec. 7880 (1), Code 1927 Ann. and 1929 Supp.

North Dakota.—Six-year presumption; Laws 1919, c. 225, sec. 1 (3); (Supplement to Compiled Laws, sec. 2346 b 1 (3)); two-year rebuttable presumption substituted; Laws 1927, c. 267, sec. 2 (4) (c).

South Carolina.—Five-year presumption as to transfers between parties related by blood or marriage; Laws 1922, Act 478, p. 800, sec. 1 (c); (32 Stat. Large 800); reenacted; Laws 1924, Act 538, p. 902, sec. 1 (c); reenacted; Laws 1925; Act 143, p. 201, sec. 1 (c); (34 Stat. Large 201).

Tennessee.—Two-year presumption; Acts 1919, c. 46, p. 118, sec. 1 (4); *id.* Baldwin's cumulative Code Supp. (1920), sec. 724 (a) 1 (4); *id.* Shan-

non's Ann. Code Supp. (1926), sec. 756 (a) 1 (4); two-year rebuttable presumption substituted; Acts 1929, Extra Sess., c. 29, sec. 1 (2) (c); *id.* Code of 1932, sec. 1260 (2) (c).

West Virginia.—Three-year presumption covering transfers of more than $500; Laws 1921, Extra Sess., c. 3, sec. 1 (c); *id.* Barnes Ann. Code, 1923, c. 33, sec. 1 (c); *id.* Official Code, 1931, c. 11, Art. 11, sec. 1 (c).

Wisconsin.—Six-year presumption; Laws 1913, c. 643, sec. 1; same c. 72, sec. 72.01 (3) Statutes 1929. Two-year *prima facie* presumption substituted; Laws 1929, c. 462, sec. 1.

Decisions: Conclusive presumption upheld in *Estate of Ebeling,* 169 Wis. 432; *Estate of Schlesinger,* 184 Wis. 1; *Will of Uihlein,* 187 Wis. 101. Held unconstitutional: *Schlesinger* v. *Wisconsin,* 270 U. S. 230; *Estate of Schlesinger,* 190 Wis. 283 (following decision of Sup. Ct. U. S.).

APPENDIX C

CASES IN WHICH THIS COURT HAS UPHELD THE VALIDITY OF STATUTES AFFECTING INNOCENT OBJECTS IN ORDER TO PREVENT EVASION OR AVOIDANCE

Powell v. *Pennsylvania*, 127 U. S. 678: A Pennsylvania statute prohibiting the sale of all wholly oleaginous substitutes for butter and cheese was sustained. The defendant's offer to prove that his particular product was wholesome and nutritious was rejected on the ground that the legislature's determination that the entire suppression of such articles was necessary was conclusive.

Jones v. *Brim*, 165 U. S. 180: A Utah statute provided that a person driving herds of cattle over highways constructed on a hillside would be conclusively presumed to have been negligent where damage resulted to the highway. It was sustained on the basis of experience and of difficulty of proof.

Hawker v. *New York*, 170 U. S. 189, 195: A statute of the State of New York made a person's conviction of a felony conclusive of his lack of good moral character, which was one of the prerequisites of the right to practice medicine. It was sustained on the ground of experience.

Otis v. *Parker*, 187 U. S. 606: A California constitutional provision prohibited all sales of stock on margin. Its validity was contested on the ground that its purpose and the State's proper object was to prevent gambling, but that in prohibit-

ing all sales on margin the provision necessarily prohibited some sales which were not gambling transactions. The provision was held constitutional, despite its prohibition of an entire class of transactions, not in themselves necessarily objectionable, because the legislature reasonably believed the measure necessary.

Silz v. *Hesterberg*, 211 U. S. 31: In order to protect its game, New York enacted a law prohibiting, during the closed season, the possession of certain types of game from whatever source derived. The State's power to punish the defendant who acquired abroad and imported into New York game of the class listed was upheld despite the defendant's contention that the law prohibited a transaction which had no relation to the protection of domestic game.

Purity Extract Co. v. *Lynch*, 226 U. S. 192: The statute, aimed at intoxicants, prohibited the sale of all malt liquor. The plaintiff manufactured a product composed of 5.73 per cent malt and no alcohol, and contended that the statute deprived him of property without due process of law, because his product was not intoxicating. This Court held the statute constitutional, saying (p. 201):

> It does not follow that because a transaction separately considered is innocuous it may not be included in a prohibition the scope of which is regarded as essential in the legislative judgment to accomplish a purpose within the admitted power of the government.

Hawkins v. *Bleakly*, 243 U. S. 210: A provision of the elective Workmen's Compensation Act of the State of Iowa was upheld which provided that

if an employee filed an affidavit that his employer or agent had requested him to elect to reject the act it would be conclusively presumed that the employee had been unduly influenced. The Court upheld it because of the improbability of the presumed fact being untrue, and said (p. 214):

> The lawmaker no doubt entertained the view that the act was more beneficial to employees than the common law rules of employer's liability, and that it was highly improbable an employee would reject the new arrangement of his own free will. The provision is a permissible regulation in aid of the general scheme of the act.

Hebe Co. v. *Shaw,* 248 U. S. 297: A statute of Ohio forbade the sale of condensed milk unless made from unadulterated milk from which the cream had not been removed. The appellant's product consisted of condensed skimmed milk combined with cocoanut oil; it was wholesome and nutritious. It was held that the statute could be applied to forbid the sale of this product.

Pierce Oil Corp. v. *City of Hope,* 248 U. S. 498: A city ordinance forbade the storing of gasoline, petroleum, etc., within three hundred feet of any dwelling, beyond certain small quantities specified. The ordinance was sustained against an attack based upon the Fourteenth Amendment. To the contention that its tanks in no way endangered any buildings, this Court said (p. 500):

> If it were true that the necessarily general form of the law embraced some innocent objects, that of itself would not be enough to invalidate it or to remove such an object from its grasp.

Jacob Ruppert v. *Caffey*, 251 U. S. 264: This Court upheld the war prohibition provisions of the National Prohibition Act, which forbade the sale of beverages containing one-half of one per cent or more of alcohol by volume. This Court said (p. 282):

> * * * it is clear that this provision of the Volstead Act is valid, and has rendered immaterial the question whether plaintiff's beer is intoxicating.

The same result was reached when the similar provision of Title II of the National Prohibition Act was before this Court. *National Prohibition Cases*, 253 U. S. 350, 387–388.

Everard's Breweries v. *Day*, 265 U. S. 545: An Act of Congress prohibited physicians from prescribing intoxicating malt liquors for medicinal purposes. This Act was held constitutional against the contention that malt liquors had valuable medicinal properties and that the prohibition of their sale for medicinal purposes bore no reasonable relation to the prohibition of their sale for beverage purposes.

A similar result was reached in *Lambert* v. *Yellowley*, 272 U. S. 581, where a statute limiting the amount of spiritous liquor to be prescribed by physicians was upheld.

Euclid v. *Ambler Co.*, 272 U. S. 365: A general zoning ordinance excluded all industrial establishments from a certain territory in a city. It was held that the ordinance was valid although it operated to exclude some industries which were

neither offensive or dangerous. This Court said (pp. 388–389):

> The inclusion of a reasonable margin to insure effective enforcement, will not put upon a law, otherwise valid, the stamp of invalidity. Such laws may also find their justification in the fact that, in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation.

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